6 January 2023

Submission to the Economic Development, Science and Innovation Committee

Business Payment Practices Bill

1. Thank you for the opportunity to provide submissions on the Business Payment Practices Bill (the **Bill**).

2. The Guardians of New Zealand Superannuation (**Guardians**) is an autonomous Crown entity. We are mandated[1] to manage and administer the New Zealand Superannuation Fund (**Fund**) in accordance with our governing legislation. The Fund is a global portfolio of investments that is property of the Crown and intended to help the Crown meet the cost of New Zealand Superannuation in the future.

3. The Guardians will be a "large entity" for the purposes of the Bill. We hold investments in a wide range of entities and investments, many of which would also comprise "large entities".

4. We support the underlying objective of the Bill – i.e. ensuring there is transparency in respect of relevant information on business payment terms in New Zealand. However, we have identified three areas where in our view the Bill creates disclosure requirements that are not required to achieve this underlying objective, present significant practical compliance challenges and create unnecessary compliance cost.

5. Our submissions are relevant to many New Zealand financial investors, any New Zealand entities that have offshore subsidiaries, and any entities that are part of a "group" as defined in the Bill.

A) Treatment of investors' subsidiaries

6. Clause 8(5) of the Bill will require any "large" entity that has 1 or more "subsidiaries" (as defined in the Financial Reporting Act 2013) to make a payment practices disclosure for the "group" as a whole – that is, for the entity and its subsidiaries together.

7. This makes sense in the context of a parent entity that is a general corporate/business. In that situation, the business activities may be carried out across a range of subsidiaries but with some level of centralised oversight of payment practices. It makes sense to report the information on a combined basis, and this is consistent with treatment under financial reporting requirements where the performance of the subsidiaries is consolidated into the parent's group financial statements to give a coherent overall picture of the business.

8. However, the same logic does not apply to a parent entity that is a financial investor (like the Guardians in respect of the Fund). We note that:

   (a) financial investors hold any interests in portfolio entities strictly as investments (not as subsidiaries that carry on a part of the financial investor's business). As

[1] New Zealand Superannuation and Retirement Income Act 2001, section 51.

such, a financial investor does not typically have access to the necessary information to compile the payment practices information it would be required to report in respect of its subsidiaries – particularly where the subsidiaries are not wholly-owned;

(b) grouping subsidiaries of a financial investor together, as the Bill does, is inconsistent with the treatment of such subsidiaries under financial reporting standards, because financial investors are required to account for the value of their investee subsidiaries using investment entity accounting, whereby the investment is reported as a single fair value line item rather than consolidating those subsidiaries' performance into the investor's own financial reporting. This again recognises that financial investors hold the interest as an investment that may be sold, rather than as a part of their operational activities;

(c) financial investors may hold investments in many subsidiaries which may carry on a range of businesses that are unrelated to each other and have very different payment practices. In this case any reporting that covers those subsidiaries together has significant potential to be misleading for users of the information (eg if one subsidiary is very quick to pay invoices and another is very slow); and

(d) if any of the investment subsidiaries is "large", then that subsidiary will be required to produce its own reporting under the Bill in any event – so group-level reporting is not needed to achieve the policy intent where the group comprises unrelated businesses that are subsidiaries of a financial investor.

9. A related issue arises specifically in respect of the Guardians, because investments that comprise part of the Fund may nonetheless fall within the definition of a "subsidiary" of the Guardians, even though the relevant investments are actually the property of the Crown. We are separately discussing with Treasury (our monitoring agency) how this issue, which is specific to the Guardians, should be addressed.

B) Application to offshore entities and subsidiaries

10. The definitions of "entity" and "subsidiary" in the Bill cover a wide range of entity types, regardless of whether the entities (or their subsidiaries) actually carry on business in New Zealand or have any suppliers in New Zealand.

11. As a result, on its face the Bill purports to require:

(a) a large offshore entity that does not have any connection to New Zealand to nonetheless make a payment practices disclosure[2]; and

(b) a large New Zealand entity to make a group payment practices disclosure in respect of itself and its subsidiaries, including all its offshore subsidiaries, even if those subsidiaries do not themselves carry on business in New Zealand or have any suppliers in New Zealand.

12. In both cases, it seems to us there is no strong policy justification for requiring such a

[2] We appreciate that in practice the Bill could not be enforced extraterritorially against purely offshore entities. However, in practice certain offshore companies will have some nexus/connection to New Zealand. As currently drafted the Bill would leave significant uncertainty for offshore companies as to what level of activities in New Zealand would bring them within the scope of the Bill.

disclosure by the offshore entity or in respect of the offshore subsidiaries, because the required disclosure will be of no use to any New Zealand suppliers.

13. By way of example:

    (a) one of our domestic investee companies also has a subsidiary that is dedicated to operations in Australia. As the Bill is currently drafted, the investee company would need to report on payment practices in Australia;

    (b) the Guardians holds (for the Fund) majority interests in a range of foreign private equity and other funds, some of which could be seen as "subsidiaries" under the current approach in the Bill. Disclosure of any payment practices by foreign funds based in (for example) the United States and Europe is unlikely to be helpful or relevant in a New Zealand context, and it will be impractical for us to obtain the information.

14. To address this, we suggest limiting the relevant obligations in the Bill to cover only entities and subsidiaries that are "carrying on business in New Zealand", as defined in section 332 of the Companies Act 1993. Adopting that existing definition means that existing relevant case law will also be applicable to the interpretation of this definition in the Bill. We also suggest specifying a clear threshold for the dollar value of New Zealand invoices, below which entities would not be required to report. This would avoid imposing a reporting obligation on entities that have only an immaterial connection to New Zealand.

C) Disclosures by large entities that are subsidiaries of other large entities

15. As noted above, clause 8(5) of the Bill will require any large entity that has 1 or more subsidiaries to make a payment practices disclosure for the group as a whole. However, each such subsidiary (if it is "large") is also required to make its own payment practices disclosure for itself and any subsidiaries that it in turn has.

16. This creates an element of duplication and may lead to confusion, because the same entity may be covered by a number of disclosures made by other entities in its group, and may also be required to make its own disclosure.

17. To address this, we suggest the Committee considers inserting a provision similar to section 200(3) of the Companies Act 1993. That section relates to the requirements for a company to prepare financial statements or, if it has 1 or more subsidiaries, group financial statements that cover the company and its subsidiaries. The effect of section 200(3) is that if a company is covered by group financial statements prepared by another company, the first company is not required to prepare its own separate financial statements.

Next steps

18. We do not request to make an oral submission to the Select Committee. However, we are available to discuss these matters further with the Select Committee or officials if that would be of assistance.

Ngā mihi

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Guardians of New Zealand Superannuation